

MEMORANDUM FOR: See Distribution

FROM :

Chief, Legislation Division, OLC

SUBJECT: Fiscal Year 1982 Intelligence
Authorization Bill

Attached is a preliminary draft of language which I am proposing for incorporation into the conference appeal letter which is being put together by the IC Staff. I would appreciate having any comments on this language as soon as possible. Please note in particular the language pertaining to section 103 of the House Bill. This language is designed in part to rule out application of section 103 to Economy Act transfers without specifically saying so.

Attachments

Distribution

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OLC:GMC:sf (30 June 1981)

I would also like to comment on some of the substantive legislative portions of the Authorization Bill.

-- I believe that subsection 101(c) of S. 1127 better captures the intent of this provision than does the corresponding section 104 of H.R. 3454.

-- The House Bill contains at section 103 a provision related to notification of expenditures in excess of program authorizations which is not found in the Senate Bill.

This provision was first enacted last year as part of the fiscal year 1981 Authorization. I have no objection to its reenactment, provided there exists a mutual understanding that its requirements pertain to the reprogramming or transfer of appropriated funds among the underlined major programs authorized in the Schedule of Authorizations. If we are not in agreement on the meaning of section 103 I would strongly recommend that the section be deleted from the Bill.

-- Section 503 of S. 1127 contains an important amendment to subsection 5(d) of the Central Intelligence Agency Act of 1949. This amendment clarifies statutory authority for CIA personnel to carry firearms in connection with the performance of the Agency's authorized functions. Although there is no corresponding provision in H.R. 3454, the Permanent Select Committee on Intelligence is familiar with the need for the amendment, having held a hearing on this matter in April of 1979. I urge retention of this provision.

-- The Senate Bill also contains (section 504) a provision related to the unauthorized use of the Central Intelligence Agency name, initials, or seal. A similar provision for the National Security Agency appears at section 507 of the Senate Bill. These provisions are needed to prevent impersonation, solicitation or commercial activity that conveys the impression of official authorization or approval. The provisions would authorize the Attorney General to institute civil proceedings to enjoin the proscribed practices. This is an important provision and I recommend its retention.

-- Section 502 of the House Bill and section 505 of the Senate Bill provide new authorities for allowances, benefits, and travel. Procedurally, I believe that the House Bill's structuring of these authorities as an amendment to section 4 of the CIA Act of 1949 is the preferable approach. With respect to the substantive makeup of these provisions, however, it would appear that the Senate's language better expresses the flexibility which is so necessary in this area. I also believe that it is important for the conferees to make clear that the new benefits, allowances and travel authorities extend to dependents. The Senate's subsection 505(a) is explicit on this point. Finally, I must question the wisdom of subsection 502(b)(5) of the House Bill, which calls for prior submission of implementing regulations (and changes thereto) to the Intelligence Committees. I would note that benefit and travel regulations tend to be in a state of almost constant flux, and that a requirement for prior reporting of changes would undermine the very flexibility and efficiency which the new provisions are designed to achieve. I would urge, therefore, that the conferees agree upon a less burdensome reporting mechanism.

-- Section 510 of S. 1127 contains three provisions designed to protect intelligence personnel against physical assaults, threats, extortion and kidnapping. These provisions have the full endorsement of the Department of Justice. I strongly urge that section 510 be retained in the Bill.

-- Title VI of S. 1127 contains the Defense Intelligence Agency Personnel Management Act of 1981. I fully support the concept of enhanced personnel authorities for DIA, but I am concerned that some of the language now contained in S. 1127 may be overly broad and could, through adverse judicial interpretation, have an inimical impact on analogous CIA and NSA authorities. I have, therefore, attached several suggestions for revisions in Title VI which would provide DIA with the augmented personnel authorities it needs, without the potential for unintended adverse consequences.

CIVILIAN PERSONNEL MANAGEMENT

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SEC. 602. (a) Chapter 81 of title 10, United States

Code, is amended by inserting the following new section after
section 1586:

"§ 1587. Civilian personnel management in the Defense In-
telligence Agency

"(a)(1) The Secretary of Defense (or his designee) may,
without regard to the ^{civil service laws} provisions of title 5 relating to the
establishment of (and appointment to) positions in the civil
service—

"(A) establish such positions for civilian officers
and employees in the Defense Intelligence Agency as
may be necessary to carry out the functions of such
Agency; and

"(B) appoint individuals to such positions; and
(C) Remove individuals from such positions in the interests
of the national security. An
action to remove an
individual from any such
position by a
designee pursuant to
the authority contained
herein shall be appealable
to the Secretary of
Defense.

"(2) The Secretary of Defense (or his designee) shall fix
the rates of basic pay for positions established under para-
graph (1) in relation to the rates of basic pay contained in the
General Schedule under section 5332 of title 5 for positions
subject to such Schedule which have corresponding levels of
duties and responsibilities. Except for positions in the Senior
Defense Intelligence Executive Service, no officer or employ-
ee of the Defense Intelligence Agency may be paid basic
compensation at a rate in excess of the highest rate of basic
pay contained in such General Schedule.

1 excess of additional compensation authorized by section
2 5941(a) of title 5 for employees whose rates of basic compen-
3 sation are fixed by statute.

4 “(e) Nothing in this section or any other law may be
5 construed to require the disclosure of the organization or any
6 function of the Defense Intelligence Agency, of any informa-
7 tion with respect to the activities thereof, or of the names,
8 titles, salaries, or number of the persons employed by such the
Defense Intelligence -- 9 -- Agency, except for that information required by the Congress
10 to accomplish normal authorization and appropriation func-
11 tions.

12 “(f)(1) Notwithstanding the personnel management laws
13 under title 5, or any other law, the Secretary of Defense
14 may, in his discretion, terminate the employment of any civil-
15 ian officer or employee of the Defense Intelligence Agency
16 whenever he deems such termination necessary or advisable
17 in the interests of the United States.

18 “(2) Any termination under this subsection shall not
19 affect the right of the officer or employee involved to seek or
20 accept employment with any other department or agency of
21 the United States if he is declared eligible for such employ-
22 ment by the Office of Personnel Management.

23 “(3) The Secretary of Defense may delegate authority
24 under this subsection only to the Deputy Secretary of De-
25 fense and the Director of the Defense Intelligence Agency.

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1 ~~An action to terminate any civilian officer or employee by~~
2 ~~either such officer shall be appealable to the Secretary of~~
3 ~~Defense."~~

4 (b) The table of sections for chapter 81 of title 10,
5 United States Code, is amended by inserting after the item
6 relating to section 1586 the following new item:

"1587. Civilian personnel management in the Defense Intelligence Agency."

7 EARLY RETIREMENT IN THE SENIOR DEFENSE
8 INTELLIGENCE EXECUTIVE SERVICE

9 SEC. 603. (a) Section 8336 of title 5, United States
10 Code, is amended by redesignating subsection (k) as subsec-
11 tion (l) and inserting immediately after subsection (j) the fol-
12 lowing new subsection:

13 "(k) A member of the Senior Defense Intelligence Ex-
14 ecutive Service who is removed from the Senior Defense In-
15 telligence Executive Service for less than fully successful
16 performance after completing 25 years of service or after be-
17 coming 50 years of age and completing 20 years of service is
18 entitled to an annuity."

19 (b) Section 8339(h) of title 5, United States Code, is
20 amended by striking out "section 8336(d), (h), or (j)" and
21 inserting in lieu thereof "section 8336(d), (h), (j), or (k)".

TRANSMITTAL SLIP		DATE: 30 June 81
TO: SD/Pres/PA & E		
ROOM NO.	BUILDING	30 JUN 1981
REMARKS:		
<p>C/PPS L 1 JUL 1981</p> <p>I have reviewed & see no difficulties.</p> <p>If your staff doesn't suggest a quick note back to Gary from Ben.</p> <p>Pete</p> <p>C/PA Jack - 06 JUL 1981</p> <p>handle name give for me what you give to Pete</p>		
FROM: SD/Pres		
ROOM NO.	BUILDING	EXTENSION